



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 12, 1996

Mr. Jay H. Granberry  
Assistant City Attorney I  
City of Bryan  
P.O. Box 1000  
Bryan, Texas 77805

OR96-2383

Dear Mr. Granberry:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 102452.

The City of Bryan (the "city") received a request for "all information contained in case number 96061118." You inform us that the city released some information to the requestor, but that pursuant to sections 552.103 and 552.108 of the Government Code the city seeks to withhold from disclosure the statements of two police officers concerning the referenced case.

Section 552.108 of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution. Gov't Code § 552.108; *see Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). We have reviewed the information at issue, which concerns an investigation of a complaint about a city police officer. The information indicates that no criminal prosecution resulted from the investigation. Section 552.108 generally is not applicable to information relating to complaints against law enforcement officers when no criminal investigation or prosecution results from an investigation of allegations of officer misconduct. *See Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied); Open Records Decision No. 350 (1982). Consequently, the city may not withhold the requested information based on section 552.108.

Section 552.103(a) of the Government Code reads as follows:

(A) Information is excepted from [required public disclosure] if it is information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103 applies is a two-prong showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation.

You inform us that the city has received several threats of a suit being brought against the city, but "the city has received no official notification of a suit being filed." You assert that the requested information relates to reasonably anticipated litigation.

Section 552.103 requires concrete evidence that the claim that litigation may ensue is more than mere conjecture. Open Records Decision No. 518 (1989). A mere threat to sue is not sufficient to establish that litigation is reasonably anticipated. See Open Records Decision No. 331 (1982). There must be some objective indication that the potential party intends to follow through with the threat. See Open Records Decision No. 452 (1986) at 5.

We do not believe the city has established that litigation is reasonably anticipated in this case. Consequently, the city may not withhold the information from disclosure based on section 552.103.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo  
Assistant Attorney General  
Open Records Division

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Enclosures: Submitted documents

cc: Mr. David Jaska  
1601 Lenert  
College Station, Texas 77840  
(w/o enclosures)